

Remarks:

Applicant has carefully studied the non-final Examiner's Action mailed 02/26/2004, having a shortened statutory period for response set to expire 05/26/2004. The amendment appearing above and these explanatory remarks are believed to be fully responsive to the Action. Accordingly, this important patent application is now believed to be in condition for allowance.

Applicant responds to the outstanding Action by centered headings that correspond to the centered headings employed by the Office, to ensure full response on the merits to each finding of the Office.

Double Patenting

Applicant acknowledges the Office's recitation of the legal status of the non-statutory double patenting rejection.

Claims 1-20 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 1-/064,850.

The Office helpfully notes that: "Applicant has not disclosed where the gradual ninety degree bend starts, therefore, the elongated slot of the copending application 10/064,850 ends in the gradual ninety-degree bend. Hence, the application reads on the copending application.

Independent claims 1 and 10 have therefore been amended to recite where the gradual ninety-degree bend starts so that said claims no longer read on the copending application and thereby obviating any need for a terminal disclaimer.

More particularly, said independent claims now recite that 1) the upper member has a gradual ninety degree bend formed therein, that 2) the gradual ninety degree bend separates the toe end of the upper member from the heel end of the upper member, that 3) the heel end of the upper member separates from the toe end of the upper member along a parting line that is transverse to a longitudinal axis of the prosthetic foot, that 4) a slot is formed in the heel end of the upper member, that 5) the slot is substantially coincident with the longitudinal axis of the prosthetic foot, and that 6) the slot extends from an uppermost end of the heel end of the upper member to a point about mid-way of the gradual ninety degree bend.

Therefore, the independent claims now recite where the gradual ninety-degree bend starts, and further recites the structure of the novel prosthetic foot with increased particularity so that said independent claims can no longer be construed as reading on the claims of the copending application. The structural differences now claimed provide a prosthetic foot that behaves in a substantially different way than the prosthetic foot of the copending application. The differences between said prosthetic foot are not merely based upon a design choice because... The Office is therefore requested to withdraw the rejection based upon obviousness-type double patenting.

Conclusion

The Office's approval of the drawings changes submitted herewith is solicited.

If the Office is not fully persuaded as to the merits of Applicant's position, or if an Examiner's Amendment would place the pending claims in condition for allowance, a telephone call to the undersigned at (727) 507-8558 is requested. Applicant thanks the Office for its careful examination of this important patent application.

Very respectfully,

SMITH & HOPEN

By: 

Ronald E. Smith
Suite 220
15950 Bay Vista Drive
Clearwater, FL 33760
(727) 507-8558
Attorneys for Applicant

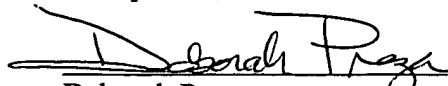
Dated: April 30, 2004

pc: Aldo A. Laghi, Ph.D.

CERTIFICATE OF MAILING
(37 C.F.R. 1.8)

I HEREBY CERTIFY that this Amendment A, including Introductory Comments, Amendments to the Specification, Amendments to the Claims, Amendments to the Drawing Figures, and Remarks, is being deposited with the United States Postal Service by first class mail in an envelope addressed to: Mail Stop Non-Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on April 30, 2004.

Dated: April 30, 2004


Deborah Preza



Mail Stop Non-Fee Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RECEIVED
MAY 6 - 2004
GROUP 3600

RECEIVED
JUL 15 2004
TECHNOLOGY CENTER R3700



Application No. 10/064,837
Amendment dated April 30, 2004
Reply to Office Action mailed February 26, 2004
Annotated Sheet Showing Changes

FIG. 13

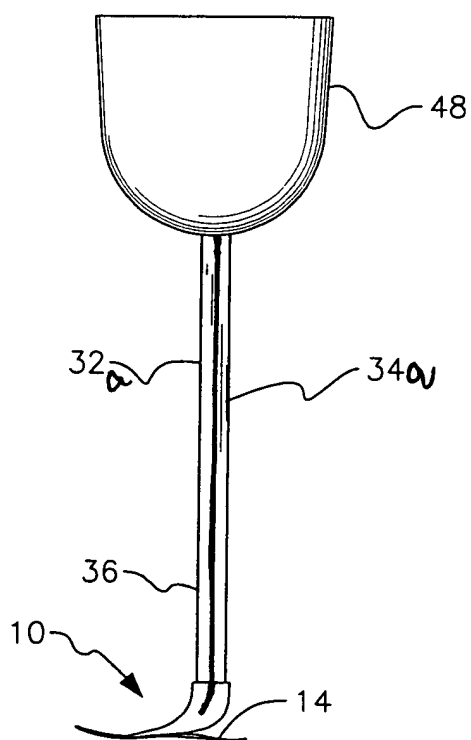
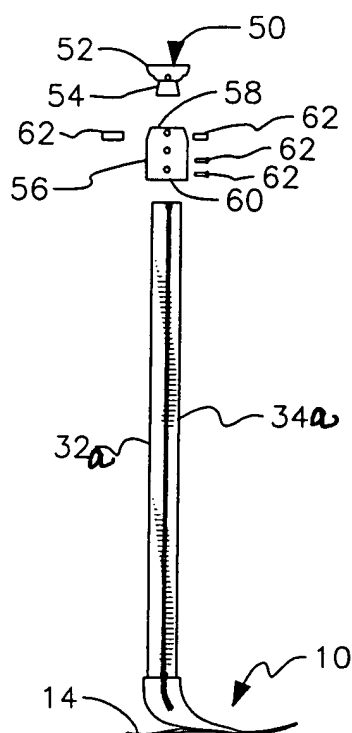


FIG. 14





Application No. 10/064,837
Amendment dated April 30, 2004
Reply to Office Action mailed February 26, 2004
Annotated Sheet Showing Changes

FIG. 15A

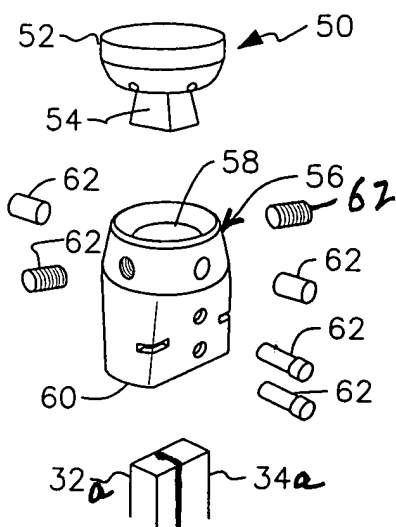


FIG. 15B

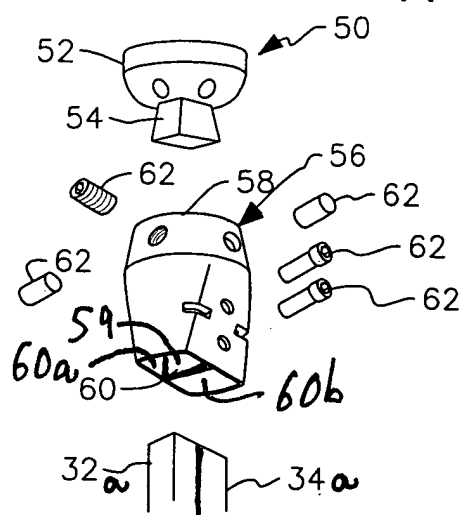


FIG. 15C

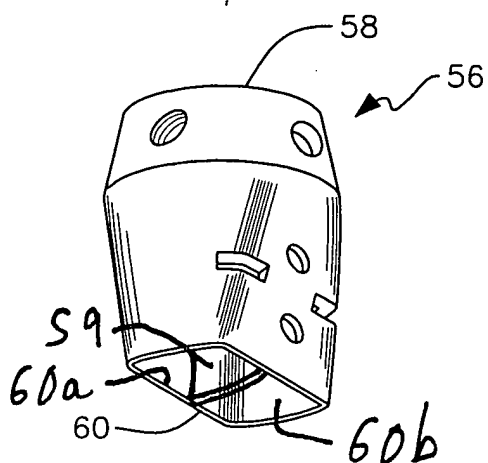


FIG. 15D

